

Notice of Allowability

Application No.

10/780,836

Examiner

Jaime M. Holliday

Applicant(s)

BACKES, FLOYD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed October 12, 2006.
2. ☒ The allowed claim(s) is/are 1-3.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on October 12, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application # 10/780836 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

2. Applicant's arguments, see page 4 of "REMARKS", filed October 12, 2006, with respect to **claims 1-3** have been fully considered and are persuasive. The Double Patenting rejection of claims 1-3 has been withdrawn.

Allowable Subject Matter

3. **Claims 1-3** are allowed.

4. The following is an examiner's statement of reasons for allowance:

Consider **claim 1**, the most relevant prior art of record, **Kallio (Pub # U.S. 2004/0014422 A1)** in view of **Feder et al. (U.S. Patent # 6,522,881 B1)**, fails to specifically show, disclose, or suggest paging packets received by the terminal devices, wherein the paging packet indicate current transmission power attenuation relative to

maximum possible transmission power, and the terminal devices attempt to select an access point based at least in-part on the transmission power attenuation.

Kallio clearly shows and discloses an invention that enables terminal devices to efficiently transition from a first access point to a second access point based on service discovery information that is transmitted by the second access point. The current access point establishes a link with the terminal device (station is associated with an access point); sends service description data to the terminal device; and authenticates the link with the second access point using a group key based on the service description data (method for use by a station in a wireless communications environment wherein multiple channels are available for communication). Terminal device **402** enters a page scan state, where it awaits one or more paging messages. Access point **406** enters a paging mode and transmits one or more paging packets. These paging packets each include an identification number based on the address of terminal device. Meanwhile, during this step, terminal device (which is in page scan mode) responds to the paging packets by transmitting a packet that includes its address (receiving Announce messages from access points, the Announce messages being indicative of access point presence and protocol capability; sending Bid messages to the selected access point to indicate that the station desires to communicate in the wireless communications environment via the access point). The access point receives this packet from terminal device. In response, access point transmits a frequency hop synchronization (FHS) packet. The FHS packet is used to pass information that allows terminal device to synchronize with the frequency hopping sequence of access point.

Upon receipt of this FHS packet, terminal device transmits a further packet to confirm receipt of the FHS packet. Both terminal device and access point enter into the connection state at this point (receiving an Accept message from the selected access point to reconfigure the station to communicate via the selected access point, the Accept message indicating that the access point will allow the station to communicate in the wireless communications environment via the selected access point), (figures 8 and 10, paragraphs 13, 15, 134 and 135).

Feder et al. clearly show and disclose a method and apparatus for use in a wireless communications network that searches for the best serving access point of a base station as a function of communication quality. Each base station **200** includes five access points (AP) that are assigned a different 1MHz channel. A wireless modem **270** in a fixed wireless network executes an AP search/selection sequence in response to a triggering event, such as when service quality degrades below a threshold level. After detecting beacons and obtaining a communication link quality metric for each neighboring access point, the wireless modem selects the best access point based on the communication link quality metric (periodically attempting to select at least on access point from which an Announce message was received, the selection based at least in-part on an indication that the selected access point will provide better service than the access point with which the station is currently associated), (abstract, column 2 lines 59-63, column 3 lines 6-10, column 4 lines 6-11).

Kallio in view of Feder et al., however, lack the claimed features of the Announce messages being indicative of and current transmission power attenuation relative to

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maximum possible transmission power; and selecting an access point from which an Announce message was received, the selection based at least in-part on the transmission power attenuation, therefore these limitations, in conjunction with the other limitations recited in claim 1, are novel and unobvious in view of the combination of Kallio and Feder et al.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

EXAMINER'S AMENDMENT

The application has been amended as follows:

Insert in first line of specification:

This application claims benefit of 60/449,602 02/24/2003 and claims benefit of 60/466,448 04/29/2003 and claims benefit of 60/472,320 05/21/2003 and claims benefit of 60/472,239 05/21/2003.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime M. Holliday whose telephone number is (571)

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272-8618. The examiner can normally be reached on Monday through Friday 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jaime Holiday
Patent Examiner

JEAN GELIN
PRIMARY EXAMINER

Jean Gelin